



PROJECT SOUTH:
INSTITUTE FOR THE ELIMINATION OF POVERTY & GENOCIDE
9 GAMMON AVENUE • ATLANTA, GEORGIA 30315
404.622.0602 OFFICE

June 5, 2018

SENT VIA U.S. MAIL

USCIS FOIA/PA Appeals Office
150 Space Center Loop, Suite 500
Lee's Summit, MO 64064-2139

**Re: Freedom of Information Act Appeal: Expedited Processing Requested for
NRC2018072037 (USCIS)**

Dear Freedom of Information Officer,

This is an appeal of a denial of expedited processing under the Freedom of Information Act, 5 U.S.C. § 552(a)(6)(E)(i)(I) ("FOIA"), and 6 C.F.R., Chapter 1, Part 5 § 5.5.

I. The Request

On April 19, 2018, Project South submitted a FOIA request (the "Request") to U.S. Immigration and Customs Enforcement ("ICE") for expedited processing of (1) all records relating to ICE's standards of operation at the Stewart Detention Center ("SDC"), (2) all records in ICE's possession relating to the conditions at SDC, and (3) all records in ICE's possession pertaining to Mr. Yulio Castro-Garrido, who died while in custody of ICE at SDC.

On May 2, 2018, ICE responded to the Request, indicating that it would produce records in ICE's custody, possession, or control, while transferring the request in part to the FOIA Officer for U.S. Citizenship and Immigration Services ("USCIS"), Jill Eggleston, for processing and direct response. On May 16, 2018, Project South received a response from Jill Eggleston denying its request for expedited processing as unwarranted. Copies of the original Request and the agency's response are enclosed.

II. Argument

The FOIA provides for expedited processing when there is a "compelling need" because either (1) "[a] failure to obtain requested records on an expedited basis ... could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," or (2) "[w]ith respect to a request made by a person primarily engaged in disseminating information," there is an "urgency to inform the public concerning actual or alleged Federal Government activity."¹ As demonstrated below, there exists a compelling need for expedited processing in this case because (1) failure to expedite the Request could reasonably be expected to pose an imminent threat to

¹ 5 U.S.C. § 552(a)(6)(E)(v)



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the life or safety of individuals detained by ICE, and (2) Project South is an organization primarily engaged in disseminating information, and the records sought are urgently needed to inform the public about actual or alleged government activity.

A. Failure to Obtain the Requested Records on an Expedited Basis Could Reasonably be Expected to Pose an Imminent Threat to the Life or Physical Safety of an Individual

Failure to obtain the requested records on an expedited basis will allow ICE's current detention practices to remain unchecked, thereby posing an imminent threat to the life or safety of detained individuals.

ICE's detention policies and standards of operation have led to the deaths of at least 179 detained immigrants since 2003, including 12 in fiscal year 2017. Recent reports have highlighted the conditions leading to these deaths, including a December 2017 report by the Office of Inspector General ("OIG") in the U.S. Department of Homeland Security ("DHS") detailing its concerns regarding treatment and care of immigrants detained by ICE,² a May 2017 report "examin[ing] serious lapses in health care that have led to severe suffering and at times the preventable or premature death of individuals held in immigration detention facilities,"³ and a February 2016 report concluding that "failure to provide adequate medical care has continued to result in unnecessary deaths."⁴

The treatment of detained immigrants in Georgia is particularly severe. Since May 2017, three individuals have died while in ICE custody in the state of Georgia. The conditions at SDC received special attention and censure in the above-referenced DHS OIG report.⁵ The inhuman treatment and conditions in these facilities have also been the focus of a publicly-disseminated report by Project South that was released in May 2017.⁶

Disclosure of the information surrounding the treatment and death of Mr. Castro, as well as the medical standards, protocols, and overall conditions at SDC, will help identify the problems at SDC that have led to deaths of individuals in ICE custody. It is exactly these types of life-or-

² U.S. Dep't of Homeland Security Office of Inspector General, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 11, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf> (finding "long waits for the provision of medical care, including instances of detainees with painful conditions," unhygienic conditions, lack of sanitary supplies, and "an inconsistent and insufficiently documented grievance resolution process" at Facility, as well as "language barriers [that] prevented detainees from understanding medical staff" generally).

³ Human Rights Watch, CIVIC, *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention*, at 1 (May 2017), https://www.hrw.org/sites/default/files/report_pdf/usimmigration0517_web_0.pdf.

⁴ ACLU, DWN, NIJC, *Fatal Neglect: How ICE Ignores Deaths in Detention*, at 2 (Feb. 2016), <https://www.detentionwatchnetwork.org/sites/default/files/reports/Fatal%20Neglect%20ACLU-DWN-NIJC.pdf>.

⁵ See discussion and excerpts, *supra* note 3.

⁶ PROJECT SOUTH, IMPRISONED JUSTICE: INSIDE TWO GEORGIA IMMIGRANT DETENTION CENTERS (May 2017), https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf (describing conditions of two detention centers in the state of Georgia: The Stewart Detention Center and the Irwin County Detention Center).



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death situations which courts have found to warrant expedited processing.⁷ By knowing and understanding the problems with current practices, ICE and other government officials can prevent more deaths from occurring in ICE custody and ensure the physical safety of individuals in ICE custody. Without this information, the lives of detained immigrants in ICE custody in the state of Georgia are imminently at risk.

B. The Information Is Requested by an Organization Primarily Engaged in Disseminating Information and the Records Sought Are Urgently Needed to Inform the Public about Actual or Alleged Federal Government Activity

a. Project South is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

Project South is “primarily engaged in dissemination of information” pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II).⁸ Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Project South’s work and are among its primary activities.⁹ Project South is dedicated to the realization and defense of human rights and social justice. Dissemination of information to the public at large, and to impacted communities in particular, is a critical and substantial component of Project South’s mission and work.¹⁰

b. The records sought are urgently needed to inform the public about actual or alleged government activity.

The records requested by Project South are urgently needed to inform the public about actual or alleged government activity. In determining whether there is an “urgency to inform,” and hence a “compelling need,” courts consider (1) whether the request concerns a matter of current exigency to the American public, (2) whether the consequences of delaying a response would compromise a significant recognized interest, and (3) whether the request concerns federal

⁷ See, e.g., *Exner v. FBI*, 443 F. Supp. 1349, 1353 (S.D. Cal. 1978) (plaintiff obtained expedited treatment after leak of information exposed her to harm by organized crime figures), *aff’d*, 612 F.2d 1202 (9th Cir. 1980); *Cleaver v. Kelley*, 427 F. Supp. 80, 81 (D.D.C. 1976) (plaintiff faced multiple criminal charges carrying possible death penalty in state court).

⁸ See also 6 C.F.R. § 5.5(d)(1)(ii) (expedited processing is warranted where there is “[a]n urgency to inform the public about an actual or alleged federal government activity.”).

⁹ Courts have found organizations that engage in information dissemination activities similar to Project South are “primarily engaged in disseminating information.” See, e.g., *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”); *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

¹⁰ About Us, Project South: We All Count, We Will Not be Erased, <https://projectsouth.org/about/>.



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government activity.¹¹

First, the requested records certainly concern a matter of current public interest, as evinced by the hundreds of articles from various news outlets over recent months concerning the death of Mr. Castro and the ICE policies that could have led to his untimely demise.^{12, 13}

Second, delaying a response to the request through non-expedited processing would compromise a significant public interest. The requested records seek to inform the public about ICE's activities in light of the arrest, detention, and subsequent death of a community member who had resided in the United States, supported his family, and "had always been really healthy" before entering ICE custody.¹⁴ Lapses in the care provided to detained immigrants, including medical care and conditions leading to deaths in detention are of grave concern to the public. Courts have consistently recognized that information which sheds light on an agency's performance of its statutory duties is in the public interest, and delaying access to such information cuts against the desire for public scrutiny of agency conduct.¹⁵

Furthermore, expedited processing is necessary to provide the public and, importantly, Mr. Castro's wife and family with information regarding the circumstances of his death. After Mr. Castro's death on January 31, 2018, ICE provided conflicting reports regarding the circumstances surrounding his passing.¹⁶ Mr. Castro's wife and children, as well as Mr. Castro's other family members and the public in general, deserve to know the truth about what caused a healthy 33-year old man who was a father, a son, a brother, and a husband, to die in ICE custody.¹⁷

Lastly, the request concerns federal government activity because it seeks to discover ICE's standards of operation and the agency's treatment of detained persons.

For the above reasons, this request satisfies the requirements for expedited processing under

¹¹ *Bloomberg L.P. v. United States FDA*, 500 F. Supp. 2d 371, 377 (2007).

¹² *See Id.* (finding that FOIA request concerned a matter of current exigency to the public even though record before the agency cited only one relevant article).

¹³ Sommerfeldt, Chris. "Cuban Immigrant Awaiting Removal Dies in ICE Custody, Marking the Second Detainee Death in as Many Months - NY Daily News." *Nydailynews.com*, New York Daily News, 1 Feb. 2018, www.nydailynews.com/news/national/cuban-immigrant-dies-ice-custody-awaiting-deportation-article-1.3793569; "Cuban Detainee, 33, Dies in ICE Custody." *NBCNews.com*, NBCUniversal News Group, www.nbcnews.com/news/us-news/cuban-detainee-33-dies-ice-custody-n843531.

¹⁴ Jeremy Redmon, Brother: Cuban was healthy before dying of pneumonia in ICE custody, *ATLANTA J.-CONST.* (Feb. 20, 2018), <https://politics.myajc.com/news/state--regional-govt--politics/brother-cuban-was-healthy-before-dying-pneumonia-ice-custody/9TNpi195CYQPyiGPoSyzmJ/>.

¹⁵ *See Bible v. Oregon Natural Desert Ass'n*, 519 U.S. 355, 355–56 (1997); *see also ACLU v. United States Dep't of Homeland Sec.*, 973 F. Supp. 2d 306, 316 (2013) (noting that the public interest in disclosure is "particularly compelling" where request sought to highlight ICE's "historically troublesome practices").

¹⁶ Redmon, *supra* note 14.

¹⁷ *See ACLU v. United States Dep't of Homeland Sec.*, 738 F. Supp. 2d 93, 118 (2010) (noting that the public have a general interest in the disclosure of information pertaining to detained individuals).



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5 U.S.C. § 552(a)(6)(E)(v)(II). Accordingly, Project South respectfully requests reversal of the decision denying expedited processing.

Pursuant to 6 C.F.R. § 5.5(e)(3), the undersigned certifies that the information provided above as the basis for requesting expedited processing is true to the best of her knowledge and belief.

Project South also reserves the right to appeal a decision to withhold any information, or to deny expedited processing. Project South looks forward to a timely reply to this appeal within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(ii).

Please contact Azadeh Shahshahani at 404-622-0602 or azadeh@projectsouth.org should you wish to discuss this appeal. Thank you for your prompt attention to this matter.

Sincerely,

Azadeh N. Shahshahani
Legal & Advocacy Director